

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

**RAD Referral: 16L-20<sup>1</sup>**

DATE REFERRED: November 4, 2016

RESPONSE RECEIVED: December 28, 2016

DATE ACTIVATED: February 21, 2017

ELECTION CYCLE: 2016

EXPIRATION OF SOL:

EARLIEST: October 1, 2020

LATEST: March 1, 2021

**SOURCE:**

Internally Generated

**RESPONDENTS:**

Kyle McCarter for Congress Committee and  
Kelly Standfield in her official capacity as  
treasurer

**MUR: 7007**

DATE COMPLAINT FILED: February 5, 2016

DATE OF LAST RESPONSE: July 28, 2016

DATE ACTIVATED: February 21, 2017

ELECTION CYCLE: 2016

EXPIRATION OF SOL:

EARLIEST: June 1, 2020

LATEST: December 31, 2020

**COMPLAINANT:**

Richard Stubblefield

**RESPONDENTS:**

Kyle McCarter for Congress Committee and  
Kelly Standfield in her official capacity as  
treasurer  
Citizens for Kyle McCarter  
Rural King Distribution & Management, Inc.  
Rural King Distributing  
Total Grain Marketing, LLC  
Burgdorf and Associates Wealth Managers, Inc.  
Tri Ford, Inc.

<sup>1</sup> The Reports Analysis Division ("RAD") initially referred this matter to the Alternative Dispute Resolution Office ("ADRO") pursuant to the applicable ADRO threshold set forth in Standard 5 of RAD Review and Referral Procedures for Authorized Committees at 53. See Memorandum from Debbie Chacona, RAD, to Lynn M. Fraser, ADRO (Oct. 20, 2016). ADRO later referred this matter to the Office of General Counsel. See Memorandum from Lynn Fraser, ADRO, to Greg Baker, Office of General Counsel (Nov. 4, 2016).

James W. Best  
Darren Bailey

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30116(a)  
52 U.S.C. § 30116(f)  
52 U.S.C. § 30118  
52 U.S.C. § 30125(e)  
11 C.F.R. § 103.3  
11 C.F.R. § 110.1(d)  
11 C.F.R. § 110.6(c)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

RAD Referral 16L-20 ("Referral") and the MUR 7007 Complaint address alleged excessive and prohibited contributions received by Kyle McCarter for Congress Committee ("Federal Committee") during the 2016 election cycle. The Referral also addresses the Federal Committee's receipt of general election contributions that were not refunded after McCarter lost the 2016 primary election. The Complaint also alleges that McCarter's state senate committee, Citizens for Kyle McCarter ("State Committee"), made prohibited in-kind contributions to the Federal Committee by paying for consulting services provided to McCarter's federal campaign.

As discussed below, we recommend that the Commission find reason to believe that the Federal Committee knowingly accepted excessive and prohibited contributions in violation of 52 U.S.C. §§ 30116(f) and 30118(a), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). We also recommend that the Commission find reason to believe that two of the contributors, James W. Best and Darren Bailey, violated 52 U.S.C. § 30116(a) by making excessive contributions. Additionally, we recommend that the Commission enter into pre-probable cause conciliation with these Respondents and approve the attached conciliation

1 agreements. We further recommend that the Commission dismiss the allegation that Tri Ford,  
2 Inc. violated 52 U.S.C. § 30118(a); find no reason to believe that Burgdorf and Associates  
3 Wealth Managers, Inc. and Rural King Distributing, violated 52 U.S.C. § 30118(a) or that the  
4 Federal Committee violated 52 U.S.C. § 30118(a) by receiving these particular contributions;  
5 and find no reason to believe that Total Grain Marketing, LLC violated 52 U.S.C. §§ 30116(a) or  
6 30118(a), or that Rural King Distribution & Management, Inc. violated 52 U.S.C. § 30118(a).  
7 Finally, we recommend that the Commission find no reason to believe that the Federal  
8 Committee or State Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) in  
9 connection with the State Committee's alleged payment for consulting services.

## 10 II. FACTUAL AND LEGAL ANALYSIS

11 Kyle McCarter is a State Senator in the Illinois General Assembly who sought the  
12 Republican nomination in the 15th Congressional District in Illinois in 2016. McCarter  
13 designated the Federal Committee as his principal campaign committee for the congressional  
14 election. McCarter lost the primary election on March 15, 2016.

### 15 A. Excessive and Corporate Contributions

16 For the 2016 election cycle, no person was permitted to make contributions to a candidate  
17 for federal office or his authorized political committee which in the aggregate exceeded \$2,700  
18 for each election.<sup>2</sup> Candidates and political committees are prohibited from knowingly accepting  
19 excessive contributions.<sup>3</sup> The Commission's regulations provide that when a committee receives  
20 an excessive contribution, the committee must, within 60 days of the contribution's receipt,  
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<sup>2</sup> See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

<sup>3</sup> See 52 U.S.C. § 30116(f).

1 either refund the excessive portion of the contribution or obtain a redesignation or reattribution  
2 from the contributor.<sup>4</sup>

3 The Act and Commission regulations further prohibit corporations from making  
4 contributions to candidate committees and prohibit those committees from knowingly accepting  
5 or receiving such contributions.<sup>5</sup> Contributions that present genuine questions as to whether they  
6 are prohibited may be, within ten days of receipt, deposited into a campaign depository or  
7 returned to the contributor.<sup>6</sup> If such contribution is deposited and cannot be determined to be  
8 legal, the treasurer shall, within thirty days from receipt of the contribution, refund the  
9 contribution to the contributor.<sup>7</sup>

10 As set forth in the chart below, the Federal Committee is alleged to have received six  
11 2016 primary election contributions totaling \$48,363.69 that were either excessive or  
12 prohibited.<sup>8</sup> One of the corporate contributions in the amount of \$500 has apparently not been  
13 refunded, and three of the contributions totaling \$44,913.69 were not timely refunded.<sup>9</sup>

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<sup>4</sup> See 11 C.F.R. § 103.3(b)(3).

<sup>5</sup> 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

<sup>6</sup> See 11 C.F.R. § 103.3(b)(1).

<sup>7</sup> *Id.*

<sup>8</sup> See Referral at 1 (Nov. 4, 2016), Compl. at 2-3 (Feb. 5, 2016). The Complaint based its allegations on the Federal Committee's 2015 Year-End Report along with information from the Illinois Secretary of State's Office regarding the apparent corporate contributors. *Id.* at 2-3, Exs. D-H.

<sup>9</sup> Referral at 1, Attach. 3.

| Contributor  | Date         | Excessive or Prohibited Amount | Election | Refunded # Days After Receipt | Source                               |
|--|--------------|--------------------------------|----------|-------------------------------|--------------------------------------|
| Tri Ford, Inc. (Corporation) (Compl. Exhibit H)                              | 11/05/15     | \$ 305.00                      | Primary  | 84                            | Complaint and Referral               |
| James W. Best  | 11/05/15     | \$34,600.00                    | Primary  | 84                            | Complaint and Referral               |
| Darren Bailey <sup>10</sup>  | 12/08/15     | \$10,008.69                    | Primary  | 64                            | Complaint and Referral <sup>11</sup> |
| Burgdorf & Associates Wealth Managers, Inc. (Corporation) (Compl. Exhibit E) | 12/31/15     | \$ 250.00                      | Primary  | 28                            | Complaint                            |
| Rural King Distributing <sup>12</sup> (Corporation) (Compl. Exhibit F)       | 12/31/15     | \$ 2,700.00                    | Primary  | 28                            | Complaint                            |
| Terra Properties (Corporation)   | 12/31/15     | \$ 500.00                      | Primary  | N/A                           | Referral                             |
|  | <b>Total</b> | <b>\$48,363.69</b>             |          |                               |                                      |

<sup>10</sup> The Federal Committee disclosed Darren Bailey's contribution as a contribution from Total Grain Marketing, LLC ("TGM"). TGM explains that Darren Bailey, a TGM customer, delivered grain to a grain terminal in exchange for grain tickets totalling \$10,008.69. TGM Resp. at 1 (Feb. 29, 2016). Bailey then took those tickets to a TGM location to exchange the tickets for cash. Instead of receiving the cash, Bailey requested a check made out to the Federal Committee. *Id.* The TGM location granted this request, although TGM concedes this action was not consistent with TGM policy. *Id.* at 2. On February 25, 2016, after the Committee refunded the contribution to TGM, TGM issued a \$10,008.69 check to Bailey. *Id.* In view of this information from TGM, we notified Bailey of the Complaint. Bailey's Response confirms TGM's account. *See* Darren Bailey Resp. at 1 (June 27, 2016). Bailey asserts that as a novice to the election campaign process — making only one previous contribution payable to a federal candidate — he did not realize that he was making a mistake by requesting the check be made payable directly to the Federal Committee. *Id.* at 1-2. On February 11, 2016, Bailey separately contributed \$2,700 to the Federal Committee designated for the 2016 primary election.

<sup>11</sup> The Referral lists TGM as the contributor. *See* Referral at 1, Attach. 3. The proposed conciliation agreement with the Committee requires the Committee to amend its disclosure report to name Bailey as the contributor. *See infra*, Section III.

<sup>12</sup> The Complaint referred to two entities with the name "Rural King" ("Rural King Distribution & Management, Inc.," and "Rural King Distributing"), and each were notified of the Complaint. *See* Compl. at 2. Of the two, Rural King Distribution & Management, Inc. responded to the Complaint, asserting that it "had no participation in the campaign of Kyle McCarter for Congress Committee" and did not contribute "any monetary donations to [the McCarter] campaign." Rural King Distribution & Management Inc. Resp. at 1 (Feb. 19, 2016). We believe the other entity, Rural King Distributing, made the contribution at issue because the copy of the contribution check that the Federal Committee submitted in its response includes this entity's publicly available address. Federal Committee Compl. Resp., Ex. C (Refund notification letters and photocopies of refund checks) (Mar. 29, 2016). Rural King Distributing did not respond to the Complaint.

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1 The Federal Committee concedes that it received improper contributions but maintains  
2 that it did not intend to violate federal election law and asserts that it used a vendor that was  
3 responsible for depositing checks, reviewing them for election compliance purposes, and  
4 returning any that were not acceptable under the Act.<sup>13</sup> According to the Federal Committee,  
5 once the vendor alerted the Committee that "several checks had been deposited mistakenly into  
6 the campaign coffers, the monies were immediately returned to the donors."<sup>14</sup> McCarter  
7 subsequently responded to the Referral on behalf of the Federal Committee, asserting that it was  
8 his understanding that his "campaign has refunded all monies owed, had contributions re-  
9 assigned, or reclassified any transactions in error according to your requests" and that "all refund  
10 checks have cleared [the Federal Committee's] bank."<sup>15</sup>

11 As for the other Respondents in the Complaint, contributors James W. Best, Tri Ford,  
12 Inc., and Burgdorf & Associates Wealth Managers, Inc. ("Burgdorf"), who made contributions  
13 of \$37,300, \$305, and \$250, respectively, each acknowledge that they made an improper  
14 contribution that the Federal Committee refunded.<sup>16</sup>

15 The available information indicates that the Federal Committee timely refunded within  
16 30 days the corporate contributions from Burgdorf and Rural King Distributing, which reflects

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<sup>13</sup> Federal Committee Compl. Resp. at 2 (Mar. 29, 2016). Though the Federal Committee asserts that the impermissible contributions were caused by the vendor it hired to review its contributions for compliance with the Act, the Federal Committee is responsible for ensuring the permissibility of its own contributions. *See, e.g.*, MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). *But see, e.g.*, MUR 5991 (U.S. Term Limits) (dismissed the disclaimer allegations because of confirmed vendor error).

<sup>14</sup> Federal Committee Compl. Resp. at 2.

<sup>15</sup> Federal Committee Referral Resp. at 1 (Dec. 28, 2016).

<sup>16</sup> Burgdorf Resp. at 1 (Mar. 14, 2016); Tri Ford Resp. at 1 (Feb. 22, 2016); and James W. Best Resp. at 1 (July 28, 2016).

1 \$2,950 of the \$48,363.69 amount listed above.<sup>17</sup> The Federal Committee did not timely refund  
2 the remaining contributions and has not to date refunded the \$500 from Terra Properties.

3 Based on the foregoing, we recommend that the Commission find reason to believe that  
4 the Federal Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by knowingly accepting  
5 excessive and prohibited contributions totaling \$45,413.69 (\$48,363.69 - \$2,950.00). Given that  
6 the excessive contributions made by Darren Bailey and James W. Best far exceeded the \$2,700  
7 limit (by \$10,008.69 and \$34,600, respectively), we recommend that the Commission find reason  
8 to believe that Bailey and Best violated 52 U.S.C. § 30116(a). With respect to Rural King  
9 Distributing and Burgdorf, both contributions were timely refunded. Accordingly, we  
10 recommend that the Commission find no reason to believe that Burgdorf and Associates Wealth  
11 Managers, Inc. and Rural King Distributing violated 52 U.S.C. § 30118(a) by making prohibited  
12 contributions or that the Federal Committee violated 52 U.S.C. § 30118(a) by receiving  
13 prohibited contributions from these contributors.<sup>18</sup> As for Tri Ford, although its corporate  
14 contribution was not refunded within the appropriate timeframe, because of the small amount of  
15 the contribution (\$305), further use of Commission resources is not warranted.<sup>19</sup> Accordingly,  
16 we recommend that the Commission exercise its prosecutorial discretion to dismiss the allegation  
17 as to Tri Ford, Inc.<sup>20</sup> Finally, as the available information indicates that Total Grain Marketing,  
18 LLC, and Rural King Distribution & Management, Inc. did not make the contributions at issue,

<sup>17</sup> See 11 C.F.R. § 103.3(b)(1).

<sup>18</sup> See MUR 6542 (Mullin for Congress, *et al.*) (Commission found no reason to believe that corporations violated the Act by making, and the political committee by receiving, contributions that were timely refunded, including one made at the permissible contribution limit of \$2,500 per election for the 2011-2012 election cycle).

<sup>19</sup> See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007).

<sup>20</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 we recommend that the Commission find no reason to believe that Total Grain Marketing, LLC  
2 violated 52 U.S.C. §§ 30116(a) or 30118(a), or that Rural King Distribution & Management, Inc.  
3 violated 52 U.S.C. § 30118(a).<sup>21</sup>

4 **B. General Election Contributions**

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6 The Commission's regulations permit a candidate's committee to receive contributions  
7 for the general election prior to the primary election.<sup>22</sup> If, however, the candidate does not  
8 become a candidate in the general election, the committee must: (1) refund the contributions  
9 designated for the general election; (2) redesignate such contributions in accordance with  
10 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with  
11 11 C.F.R. § 110.1(k)(3).<sup>23</sup> The committee must do so within 60 days of the date that the  
12 committee has actual notice of the need to redesignate, reattribute, or refund the contributions,  
13 such as the date the candidate loses the primary or withdraws from the campaign.<sup>24</sup>

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<sup>21</sup> Any contribution by TGM, an LLC, would be treated as a contribution from either a partnership or a corporation depending on how it elects to be treated by the IRS. *See* 11 C.F.R. § 110.1(g). The available information does not indicate which form TGM has elected. In TGM's response to the Complaint, it describes itself as a subsidiary of Growmark, Inc. but does not describe its own status. *See* TGM Resp. at 1. The Illinois Secretary of State website does not include information indicating whether TGM is treated as a partnership or a corporation. *See* Illinois Secretary of State LLC File Detail Report, available at <https://www.ilsos.gov/corporatellc/CorporateLlcController>.

<sup>22</sup> *See* 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. *See* 11 C.F.R. § 102.9(e)(2).

<sup>23</sup> *See* 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i). *See also* Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

<sup>24</sup> *See* Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).



1           Redesignation of general election contributions may only occur to the extent that the  
2           amount redesignated does not exceed the contributor's contribution limit for the primary and the  
3           amounts redesignated do not exceed the net debts outstanding from the primary.<sup>25</sup> If a  
4           committee deposits contributions that exceed its net debts outstanding, it must, within 60 days of  
5           accepting the excessive contributions, refund, redesignate, or reattribute the excessive  
6           contributions.<sup>26</sup> Likewise, reattribution of a general election contribution to another contributor  
7           may only occur to the extent that such attribution does not exceed that other contributor's  
8           contribution limits.<sup>27</sup>

9           RAD referred the Federal Committee's acceptance of three general election contributions  
10          totaling \$5,900 that were designated for the 2016 general election, but were not redesignated,  
11          reattributed, or refunded within 60 days after the candidate's March 15, 2016, primary election  
12          loss.<sup>28</sup> The Federal Committee's disclosure reports do not reflect that these particular  
13          contributions have been refunded to date. The chart below lists the contributions at issue:

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<sup>25</sup> See 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i); *see also* AO 1992-15 (Russo) at 2. A committee's net debts outstanding are calculated, in relevant part, based on the total amount of debts and obligations incurred for an election, less the total cash on hand available, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii).

<sup>26</sup> See 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i); *see also* 11 C.F.R. §§ 110.1(b)(5) and 110.1(k)(3).

<sup>27</sup> See 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); *see also* AO 2007-03 (Obama) at 3.

<sup>28</sup> *Id.* at 2. See 11 C.F.R. § 102.9(e)(3).

| Contributor                            | Date         | Amount         | Election | Refunded # Days<br>After Receipt |
|--|--------------|----------------|----------|----------------------------------|
| Robert Mercer                          | 2/22/16      | \$2,700        | General  | N/A                              |
| Seven Oaks Apartments<br>(Partnership) | 3/08/16      | \$2,500        | General  | N/A                              |
| William Hotaling                       | 3/09/16      | \$ 700         | General  | N/A                              |
|  | <b>Total</b> | <b>\$5,900</b> |          |                                  |

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2       Accordingly, we recommend that the Commission find reason to believe that the Federal  
3 Committee further violated 52 U.S.C. § 30116(f) by knowingly accepting excessive  
4 contributions.

5       **C.     State Committee Payments for Consulting Services**

6       The Complaint also alleges that the State Committee used impermissible nonfederal  
7 funds to pay for the services of a campaign consultant for the Federal Committee, which the  
8 latter failed to report.<sup>29</sup> According to the Complaint, in the months before McCarter announced  
9 that he was running for federal office — McCarter filed his Statement of Candidacy on  
10 October 15, 2015 — McCarter's State Committee spent over \$33,000 on a campaign consultant,  
11 Isaiah Consulting Group ("Isaiah"), even though McCarter's term in the State Senate does not  
12 end until 2019, and he had reportedly announced that he was not seeking re-election to that  
13 office.<sup>30</sup> The Complaint further states that Elizabeth Van Holt, the owner of Isaiah, attended  
14 McCarter's October 7, 2015, federal candidacy announcement, and McCarter reportedly  
15 informed the press that she had been hired to work on his congressional campaign.<sup>31</sup>

16       The Federal Committee asserts that the State Committee previously paid Isaiah for state-  
17 level consulting, specifically, contract work performed by Van Holt for the State Committee

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<sup>29</sup>     Compl. at 1.

<sup>30</sup>     *Id.*

<sup>31</sup>     *Id.* at 2.

1 starting in January 2015 and concluding on August 31, 2015.<sup>32</sup> It further asserts that Van Holt's  
2 duties for the State Committee included "organizing events, donor contact and overall assistance  
3 with campaign management."<sup>33</sup> The Federal Committee provided a photocopy of an undated  
4 contract signed by Isaiah and McCarter on behalf of the State Committee, which provides for  
5 eight monthly payments of \$4,125 (totaling \$33,000). During this eight-month period, referred  
6 in the contract as the "Advisory Period," Isaiah agreed to "provide strategic advice, guidance,  
7 and counseling" regarding the State Committee's business and operations.<sup>34</sup> Additionally, Isaiah  
8 agreed to assist the State Committee on "branding, strategic management and fundraising"  
9 issues.<sup>35</sup>

10 In support of the Federal Committee's response, Van Holt declares in an Affidavit that  
11 she discussed with McCarter in October 2015 the possibility of working for the Federal  
12 Committee.<sup>36</sup> She further avers that while the Federal Committee "could not afford [her]  
13 services," the parties agreed verbally that she "would perform part time volunteer services for the  
14 [F]ederal Committee," which ultimately consisted of "some field work and assistance with  
15 fundraising."<sup>37</sup>

16 The State Committee asserts that the Complaint's sole "evidence" that the State  
17 Committee provided an in-kind contribution to the Federal Committee is Van Holt's "mere

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<sup>32</sup> Federal Committee Compl. Resp. at 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, Ex. A (Isaiah Contract ("Strategic Advisor Agreement")).

<sup>35</sup> *Id.*

<sup>36</sup> Federal Committee Compl. Resp., Van Holt Aff. ¶ 8.

<sup>37</sup> *Id.* ¶¶ 8-10.

1 presence at a campaign announcement," which alone is insufficient to constitute a violation of  
2 the Act.<sup>38</sup>

3 Under the Act, a federal candidate, the agent of a candidate, or an entity directly or  
4 indirectly established, financed, maintained, or controlled by, or acting on behalf of a candidate,  
5 shall not "solicit, receive, direct, transfer, or spend funds in connection with an election for  
6 Federal office" unless the funds are subject to the "limitations, prohibitions, and reporting  
7 requirements."<sup>39</sup> Moreover, Commission regulations prohibit the transfer of funds or assets from  
8 a candidate's nonfederal campaign committee to his or her federal campaign committee.<sup>40</sup> Thus,  
9 if the State Committee disbursed \$33,000 to pay for consultant fees for services provided to the  
10 Federal Committee, those payments constitute improper transfers of funds or assets to the  
11 Federal Committee.<sup>41</sup>

12 The Complaint argues that the amount of the State Committee's payment to Van Holt's  
13 consulting company and her appearance at McCarter's candidacy announcement demonstrates a  
14 scheme to use McCarter's state campaign funds to benefit his federal candidacy. But these  
15 circumstances alone are insufficient to draw an inference that such a scheme occurred. The  
16 Federal and State Committees and Van Holt each assert that the payments by the State

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<sup>38</sup> State Committee Resp. at 1-2 (June 3, 2016).

<sup>39</sup> 52 U.S.C. § 30125(e)(1); 11 C.F.R. §§ 300.60, 300.61. Illinois law permits candidates to accept contributions from corporations subject to limitations. *See* 10 ILCS 5/9-8.5(a)-(d) (during an election cycle, a candidate political committee may not accept contributions with an aggregate value over \$10,000 from any corporation).

<sup>40</sup> 11 C.F.R. § 110.3(d) (transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited); Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474 (Jan. 8, 1993) (Explanation and Justification).

<sup>41</sup> *See* MUR 6267 (Paton For Senate) (Paton's federal committee violated 11 C.F.R. § 110.3(d) by receiving prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); and MUR 5646 (Cohen for New Hampshire) (Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign).

1 Committee to Isaiah were for services provided to the State Committee at a time when McCarter  
2 was a State Senator and had ongoing official duties. Indeed, Isaiah concluded performing these  
3 services before McCarter announced his candidacy, and the Complaint does not allege, and the  
4 available record does not suggest, that these services reflected testing the waters activity to gauge  
5 the viability of his potential run. Further, Van Holt and the Federal and State Committees each  
6 deny that Isaiah performed work for the Federal Committee.<sup>42</sup> Based on these factors, it does not  
7 appear that Isaiah's services to the State Committee from January through August 2015  
8 constituted an in-kind contribution to McCarter's Federal Committee. Accordingly, we  
9 recommend that the Commission find no reason to believe the Federal and State Committees  
10 violated 52 U.S.C. § 30125(e) or 11 C.F.R. § 110.3(d).

<sup>42</sup> Shortly after the Complaint was filed, on February 8, 2016, the Federal Committee paid \$2,479 to Isaiah for "fun[d]raising consulting." See Federal Committee 2016 12-Day Pre-Primary Report (Mar. 3, 2016) at 75, *available at* <http://docquery.fec.gov/pdf/039/201603039009641039/201603039009641039.pdf>. The Federal Committee disclosed an additional disbursement to Isaiah Consulting Group for expenses on October 4, 2016. See Federal Committee 2016 Year-End Report (Jan. 31, 2017) at 8, *available at* <http://docquery.fec.gov/pdf/009/201701319042197009/201701319042197009.pdf>.

But Van Holt declares in her Affidavit that this description is incorrect, as this disbursement should have reflected a reimbursement solely to Van Holt for expenses relating to her volunteer services, which included hotel, skype, food, and gas charges. Federal Committee Resp. at 1-2, Van Holt Aff. ¶ 12. The Federal Committee further states that it intended to file an amended report to properly report this activity. *Id.* at 2. However, to date, the Federal Committee has not amended its report to reflect the appropriate disbursement.

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8 **IV. RECOMMENDATIONS**

9 1. Open a MUR in RAD Referral RR 16L-20.

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11 2. Merge the new MUR with MUR 7007.

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3. Find reason to believe that Kyle McCarter for Congress Committee and Kelly Standfield in her official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30118(a).
4. Find reason to believe that James W. Best violated 52 U.S.C. § 30116(a).
5. Find reason to believe that Darren Bailey violated 52 U.S.C. § 30116(a).
6. Dismiss the allegation that Tri Ford, Inc. violated 52 U.S.C. § 30118(a).
7. Find no reason to believe that Burgdorf and Associates Wealth Managers, Inc. or Rural King Distributing violated 52 U.S.C. § 30118(a).
8. Find no reason to believe that Kyle McCarter for Congress Committee and Kelly Standfield in her official capacity as treasurer violated 52 U.S.C. § 30118(a) in connection with contributions from Burgdorf and Associates Wealth Managers, Inc. and Rural King Distributing.
9. Find no reason to believe that Total Grain Marketing, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a).
10. Find no reason to believe that Rural King Distribution & Management, Inc. violated 52 U.S.C. § 30118(a).
11. Find no reason to believe that Kyle McCarter for Congress Committee and Kelly Standfield in her official capacity as treasurer or Citizens for Kyle McCarter violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d).
12. Approve the attached Factual and Legal Analyses.
13. Enter into conciliation with Kyle McCarter for Congress Committee and Kelly Standfield in her official capacity as treasurer prior to a finding of probable cause to believe and approve the attached Conciliation Agreement.
14. Enter into conciliation with James W. Best prior to a finding of probable cause to believe and approve the attached Conciliation Agreement.
15. Enter into conciliation with Darren Bailey prior to a finding of probable cause to believe and approve the attached Conciliation Agreement.

16. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

6/20/17  
Date

*Kathleen M. Guith*  
Kathleen M. Guith  
Associate General Counsel for Enforcement

*Mark Allen*  
Mark Allen  
Assistant General Counsel

*Roy Q. Lockett*  
Roy Q. Lockett  
Attorney

Attachments:

1. Factual and Legal Analysis for Kyle McCarter for Congress Committee and Kelly Standfield in her official capacity as treasurer, and Citizens for Kyle McCarter
2. Factual and Legal Analysis for James W. Best
3. Factual and Legal Analysis for Darren Bailey
4. Factual and Legal Analysis for Tri Ford, Inc.
5. Factual and Legal Analysis for Burgdorf and Associates Wealth Managers, Inc.
6. Factual and Legal Analysis for Rural King Distribution & Management, Inc.
7. Factual and Legal Analysis for Rural King Distributing
8. Factual and Legal Analysis for Total Grain Marketing, LLC



1 **CFEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 **RESPONDENTS:** Kyle McCarter for Congress Committee and **MUR: 7007**  
7 Kelly Standfield in her official capacity as  
8 treasurer  
9 Citizens for Kyle McCarter  
10

11 **I. INTRODUCTION**

12 This matter was generated based on information ascertained by the Federal Election  
13 Commission (the "Commission") in the normal course of carrying out its supervisory  
14 responsibilities, and by a Complaint filed by Richard Stubblefield. Kyle McCarter for Congress  
15 Committee ("Federal Committee") was referred for possible enforcement action regarding  
16 apparent excessive and prohibited contributions that it received during the 2016 election cycle.  
17 The Federal Committee was also referred regarding its receipt of general election contributions  
18 that were not refunded after McCarter lost the 2016 primary election.

19 The Federal Committee's receipt of the apparent excessive and prohibited contributions  
20 is also the subject of the Complaint in MUR 7007. The Complaint also alleges that McCarter's  
21 state senate committee, Citizens for Kyle McCarter ("State Committee"), made prohibited in-  
22 kind contributions to the Federal Committee by paying for consulting services provided to  
23 McCarter's federal campaign.

24 As set forth below, the Commission finds reason to believe that the Federal Committee  
25 knowingly accepted excessive and prohibited contributions in violation of 52 U.S.C. §§ 30116(f)  
26 and 30118(a), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").  
27 The Commission also finds no reason to believe that the Federal Committee or Citizens for Kyle

McCarter ("State Committee") violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) in connection with the State Committee's alleged payment for consulting services.

## II. FACTUAL AND LEGAL ANALYSIS

Kyle McCarter is a State Senator in the Illinois General Assembly who sought the Republican nomination in the 15th Congressional District in Illinois in 2016. McCarter designated the Federal Committee as his principal campaign committee for the congressional election. McCarter lost the primary election on March 15, 2016.

### A. Excessive and Corporate Contributions

For the 2016 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceeded \$2,700 for each election.<sup>1</sup> Candidates and political committees are prohibited from knowingly accepting excessive contributions.<sup>2</sup> The Commission's regulations provide that when a committee receives an excessive contribution, the committee must, within 60 days of the contribution's receipt, either refund the excessive portion of the contribution or obtain a redesignation or reattribution from the contributor.<sup>3</sup>

The Act and Commission regulations further prohibit corporations from making contributions to candidate committees and prohibit those committees from knowingly accepting or receiving such contributions.<sup>4</sup> Contributions that present genuine questions as to whether they

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<sup>1</sup> See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

<sup>2</sup> See 52 U.S.C. § 30116(f).

<sup>3</sup> See 11 C.F.R. § 103.3(b)(3).

<sup>4</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

1 are prohibited may be, within ten days of receipt, deposited into a campaign depository or  
2 returned to the contributor.<sup>5</sup> If such contribution is deposited and cannot be determined to be  
3 legal, the treasurer shall, within thirty days from receipt of the contribution, refund the  
4 contribution to the contributor.<sup>6</sup>

5 As set forth in the chart below, the Federal Committee is alleged to have received six  
6 2016 primary election contributions totaling \$48,363.69 that were either excessive or  
7 prohibited.<sup>7</sup> One of the corporate contributions in the amount of \$500 has apparently not been  
8 refunded, and three of the contributions totaling \$44,913.69 were not timely refunded.<sup>8</sup>

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<sup>5</sup> See 11 C.F.R. § 103.3(b)(1).

<sup>6</sup> *Id.*

<sup>7</sup> See Referral at 1 (Nov. 4, 2016), Compl. at 2-3 (Feb. 5, 2016). The Complaint based its allegations on the Federal Committee's 2015 Year-End Report along with information from the Illinois Secretary of State's Office regarding the apparent corporate contributors. *Id.* at 2-3, Exs. D-H.

<sup>8</sup> Referral at 1, Attach. 3.

| Contributor  | Date         | Excessive or Prohibited Amount | Election | Refunded # Days After Receipt | Source                               |
|--|--------------|--------------------------------|----------|-------------------------------|--------------------------------------|
| Tri Ford, Inc. (Corporation) (Compl. Exhibit H)                              | 11/05/15     | \$ 305.00                      | Primary  | 84                            | Complaint and Referral               |
| James W. Best  | 11/05/15     | \$34,600.00                    | Primary  | 84                            | Complaint and Referral               |
| Darren Bailey <sup>9</sup>   | 12/08/15     | \$10,008.69                    | Primary  | 64                            | Complaint and Referral <sup>10</sup> |
| Burgdorf & Associates Wealth Managers, Inc. (Corporation) (Compl. Exhibit E) | 12/31/15     | \$ 250.00                      | Primary  | 28                            | Complaint                            |
| Rural King Distributing (Corporation) (Compl. Exhibit F)                     | 12/31/15     | \$ 2,700.00                    | Primary  | 28                            | Complaint                            |
| Terra Properties (Corporation)   | 12/31/15     | \$ 500.00                      | Primary  | N/A                           | Referral                             |
|  | <b>Total</b> | <b>\$48,363.69</b>             |          |                               |                                      |

The Federal Committee concedes that it received improper contributions but maintains that it did not intend to violate federal election law and asserts that it used a vendor that was responsible for depositing checks, reviewing them for election compliance purposes, and

<sup>9</sup> The Federal Committee disclosed Darren Bailey's contribution as a contribution from Total Grain Marketing, LLC ("TGM"). The available information indicates that Darren Bailey, a TGM customer, delivered grain to a grain terminal in exchange for grain tickets totalling \$10,008.69. Bailey then took those tickets to a TGM location to exchange the tickets for cash. Instead of receiving the cash, Bailey requested a check made out to the Federal Committee. The TGM location granted this request. On February 25, 2016, after the Committee refunded the contribution to TGM, TGM issued a \$10,008.69 check to Bailey. On February 11, 2016, Bailey separately contributed \$2,700 to the Federal Committee designated for the 2016 primary election.

<sup>10</sup> The Referral likewise lists TGM as the contributor. See Referral at 1, Attach. 3.

1 returning any that were not acceptable under the Act.<sup>11</sup> According to the Federal Committee,  
2 once the vendor alerted the Committee that “several checks had been deposited mistakenly into  
3 the campaign coffers, the monies were immediately returned to the donors.”<sup>12</sup> McCarter  
4 subsequently responded to the Referral on behalf of the Federal Committee, asserting that it was  
5 his understanding that his “campaign has refunded all monies owed, had contributions re-  
6 assigned, or reclassified any transactions in error according to your requests” and that “all refund  
7 checks have cleared [the Federal Committee’s] bank.”<sup>13</sup>

8 The available information indicates that the Federal Committee timely refunded within  
9 30 days the corporate contributions from Burgdorf and Rural King Distributing, which reflects  
10 \$2,950 of the \$48,363.69 amount listed above.<sup>14</sup> The Federal Committee did not timely refund  
11 the remaining contributions and has not to date refunded the \$500 from Terra Properties.

12 Based on the foregoing, the Commission finds reason to believe that the Federal  
13 Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by knowingly accepting excessive and  
14 prohibited contributions totaling \$45,413.69 (\$48,363.69 - \$2,950.00).

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<sup>11</sup> Federal Committee Compl. Resp. at 2 (Mar. 29, 2016). Though the Federal Committee asserts that the impermissible contributions were caused by the vendor it hired to review its contributions for compliance with the Act, the Federal Committee is responsible for ensuring the permissibility of its own contributions. *See, e.g.*, MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor’s error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor’s failure to timely forward contributions and RPV’s consequential reporting errors). *But see, e.g.*, MUR 5991 (U.S. Term Limits) (dismissed the disclaimer allegations because of confirmed vendor error).

<sup>12</sup> Federal Committee Compl. Resp. at 2.

<sup>13</sup> Federal Committee Referral Resp. at 1 (Dec. 28, 2016).

<sup>14</sup> *See* 11 C.F.R § 103.3(b)(1).

**B. General Election Contributions**

The Commission's regulations permit a candidate's committee to receive contributions for the general election prior to the primary election.<sup>15</sup> If, however, the candidate does not become a candidate in the general election, the committee must: (1) refund the contributions designated for the general election; (2) redesignate such contributions in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with 11 C.F.R. § 110.1(k)(3).<sup>16</sup> The committee must do so within 60 days of the date that the committee has actual notice of the need to redesignate, reattribute, or refund the contributions, such as the date the candidate loses the primary or withdraws from the campaign.<sup>17</sup>

Redesignation of general election contributions may only occur to the extent that the amount redesignated does not exceed the contributor's contribution limit for the primary and the amounts redesignated do not exceed the net debts outstanding from the primary.<sup>18</sup> If a committee deposits contributions that exceed its net debts outstanding, it must, within 60 days of accepting the excessive contributions, refund, redesignate, or reattribute the excessive

<sup>15</sup> See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. See 11 C.F.R. § 102.9(e)(2).

<sup>16</sup> See 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

<sup>17</sup> See Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

<sup>18</sup> See 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i); see also AO 1992-15 (Russo) at 2. A committee's net debts outstanding are calculated, in relevant part, based on the total amount of debts and obligations incurred for an election, less the total cash on hand available, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii).

contributions.<sup>19</sup> Likewise, reattribution of a general election contribution to another contributor may only occur to the extent that such attribution does not exceed that other contributor's contribution limits.<sup>20</sup>

RAD referred the Federal Committee's acceptance of three general election contributions totaling \$5,900 that were designated for the 2016 general election, but were not redesignated, reattributed, or refunded within 60 days after the candidate's March 15, 2016, primary election loss.<sup>21</sup> The Federal Committee's disclosure reports do not reflect that these particular contributions have been refunded to date. The chart below lists the contributions at issue:

| Contributor                         | Date         | Amount         | Election | Refunded # Days After Receipt |
|-------------------------------------|--------------|----------------|----------|-------------------------------|
| Robert Mercer                       | 2/22/16      | \$2,700        | General  | N/A                           |
| Seven Oaks Apartments (Partnership) | 3/08/16      | \$2,500        | General  | N/A                           |
| William Hotaling                    | 3/09/16      | \$ 700         | General  | N/A                           |
|                                     | <b>Total</b> | <b>\$5,900</b> |          |                               |

Accordingly, the Commission finds reason to believe that the Federal Committee further violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions.

### **C. State Committee Payments for Consulting Services**

The Complaint also alleges that the State Committee used impermissible nonfederal funds to pay for the services of a campaign consultant for the Federal Committee, which the

<sup>19</sup> See 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i); *see also* 11 C.F.R. §§ 110.1(b)(5) and 110.1(k)(3).

<sup>20</sup> See 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); *see also* AO 2007-03 (Obama) at 3.

<sup>21</sup> *Id.* at 2. See 11 C.F.R. § 102.9(e)(3).

1 latter failed to report.<sup>22</sup> According to the Complaint, in the months before McCarter announced  
2 that he was running for federal office — McCarter filed his Statement of Candidacy on  
3 October 15, 2015 — McCarter’s State Committee spent over \$33,000 on a campaign consultant,  
4 Isaiah Consulting Group (“Isaiah”), even though McCarter’s term in the State Senate does not  
5 end until 2019, and he had reportedly announced that he was not seeking re-election to that  
6 office.<sup>23</sup> The Complaint further states that Elizabeth Van Holt, the owner of Isaiah, attended  
7 McCarter’s October 7, 2015, federal candidacy announcement, and McCarter reportedly  
8 informed the press that she had been hired to work on his congressional campaign.<sup>24</sup>

9 The Federal Committee asserts that the State Committee previously paid Isaiah for state-  
10 level consulting, specifically, contract work performed by Van Holt for the State Committee  
11 starting in January 2015 and concluding on August 31, 2015.<sup>25</sup> It further asserts that Van Holt’s  
12 duties for the State Committee included “organizing events, donor contact and overall assistance  
13 with campaign management.”<sup>26</sup> The Federal Committee provided a photocopy of an undated  
14 contract signed by Isaiah and McCarter on behalf of the State Committee, which provides for  
15 eight monthly payments of \$4,125 (totaling \$33,000). During this eight-month period, referred  
16 in the contract as the “Advisory Period,” Isaiah agreed to “provide strategic advice, guidance,

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<sup>22</sup> Compl. at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2.

<sup>25</sup> Federal Committee Compl. Resp. at 1.

<sup>26</sup> *Id.*



1 and counseling” regarding the State Committee’s business and operations.<sup>27</sup> Additionally, Isaiah  
2 agreed to assist the State Committee on “branding, strategic management and fundraising”  
3 issues.<sup>28</sup>

4 In support of the Federal Committee’s response, Van Holt declares in an Affidavit that  
5 she discussed with McCarter in October 2015 the possibility of working for the Federal  
6 Committee.<sup>29</sup> She further avers that while the Federal Committee “could not afford [her]  
7 services,” the parties agreed verbally that she “would perform part time volunteer services for the  
8 [F]ederal Committee,” which ultimately consisted of “some field work and assistance with  
9 fundraising.”<sup>30</sup>

10 The State Committee asserts that the Complaint’s sole “evidence” that the State  
11 Committee provided an in-kind contribution to the Federal Committee is Van Holt’s “mere  
12 presence at a campaign announcement,” which alone is insufficient to constitute a violation of  
13 the Act.<sup>31</sup>

14 Under the Act, a federal candidate, the agent of a candidate, or an entity directly or  
15 indirectly established, financed, maintained, or controlled by, or acting on behalf of a candidate,  
16 shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for  
17 Federal office” unless the funds are subject to the “limitations, prohibitions, and reporting

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<sup>27</sup> *Id.*, Ex. A (Isaiah Contract (“Strategic Advisor Agreement”)).

<sup>28</sup> *Id.*

<sup>29</sup> Federal Committee Compl. Resp., Van Holt Aff. ¶ 8.

<sup>30</sup> *Id.* ¶¶ 8-10.

<sup>31</sup> State Committee Resp. at 1-2 (June 3, 2016).

1 requirements.”<sup>32</sup> Moreover, Commission regulations prohibit the transfer of funds or assets from  
2 a candidate’s nonfederal campaign committee to his or her federal campaign committee.<sup>33</sup> Thus,  
3 if the State Committee disbursed \$33,000 to pay for consultant fees for services provided to the  
4 Federal Committee, those payments constitute improper transfers of funds or assets to the  
5 Federal Committee.<sup>34</sup>

6 The Complaint argues that the amount of the State Committee’s payment to Van Holt’s  
7 consulting company and her appearance at McCarter’s candidacy announcement demonstrates a  
8 scheme to use McCarter’s state campaign funds to benefit his federal candidacy. But these  
9 circumstances alone are insufficient to draw an inference that such a scheme occurred. The  
10 Federal and State Committees and Van Holt each assert that the payments by the State  
11 Committee to Isaiah were for services provided to the State Committee at a time when McCarter  
12 was a State Senator and had ongoing official duties. Indeed, Isaiah concluded performing these  
13 services before McCarter announced his candidacy, and the Complaint does not allege, and the  
14 available record does not suggest, that these services reflected testing the waters activity to gauge  
15 the viability of his potential run. Further, Van Holt and the Federal and State Committees each

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<sup>32</sup> 52 U.S.C. § 30125(e)(1); 11 C.F.R. §§ 300.60, 300.61. Illinois law permits candidates to accept contributions from corporations subject to limitations. *See* 10 ILCS 5/9-8.5(a)-(d) (during an election cycle, a candidate political committee may not accept contributions with an aggregate value over \$10,000 from any corporation).

<sup>33</sup> 11 C.F.R. § 110.3(d) (transfers of funds or assets from a candidate’s campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited); Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474 (Jan. 8, 1993) (Explanation and Justification).

<sup>34</sup> *See* MUR 6267 (Paton For Senate) (Paton’s federal committee violated 11 C.F.R. § 110.3(d) by receiving prohibited transfer of funds when Paton’s state senate committee paid for polling and a survey benefiting his federal campaign); and MUR 5646 (Cohen for New Hampshire) (Cohen’s federal committee received prohibited transfer of funds when Cohen’s state committee paid for start-up expenses related to his U.S. Senate campaign).

1 deny that Isaiah performed work for the Federal Committee.<sup>35</sup> Based on these factors, it does not  
2 appear that Isaiah's services to the State Committee from January through August 2015  
3 constituted an in-kind contribution to McCarter's Federal Committee. Accordingly, the  
4 Commission finds no reason to believe the Federal and State Committees violated 52 U.S.C.  
5 § 30125(e) or 11 C.F.R. § 110.3(d).

<sup>35</sup> Shortly after the Complaint was filed, on February 8, 2016, the Federal Committee paid \$2,479 to Isaiah for "fun[d]raising consulting." See Federal Committee 2016 12-Day Pre-Primary Report (Mar. 3, 2016) at 75, *available at* <http://docquery.fec.gov/pdf/039/201603039009641039/201603039009641039.pdf>. The Federal Committee disclosed an additional disbursement to Isaiah Consulting Group for expenses on October 4, 2016. See Federal Committee 2016 Year-End Report (Jan. 31, 2017) at 8, *available at* [http://docquery.fec.gov/pdf/009/201701319042197009.pdf](http://docquery.fec.gov/pdf/009/201701319042197009/201701319042197009.pdf).

But Van Holt declares in her Affidavit that this description is incorrect, as this disbursement should have reflected a reimbursement solely to Van Holt for expenses relating to her volunteer services, which included hotel, skype, food, and gas charges. Federal Committee Compl. Resp. at 1-2, Van Holt Aff. ¶ 12. The Federal Committee further states that it intended to file an amended report to properly report this activity. *Id.* at 2. However, to date, the Federal Committee has not amended its report to reflect the appropriate disbursement.

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 **RESPONDENT:** James W. Best

**MUR:** 7007

7  
8 **I. INTRODUCTION**

9 This matter was generated based on a Complaint filed by Richard Stubblefield. As set  
10 forth below, the Federal Election Commission ("Commission") finds reason to believe that  
11 James W. Best violated 52 U.S.C. § 30116(a), a provision of the Federal Election Campaign Act  
12 of 1971, as amended, by making an excessive contribution.

13 **II. FACTUAL BACKGROUND**

14 On November 5, 2015, James W. Best made two contributions totaling \$40,000 to Kyle  
15 McCarter for Congress Committee ("Committee"), the principal campaign committee for  
16 McCarter, who sought the Republican nomination in the 15th Congressional District in Illinois in  
17 2016. One contribution was in the amount of \$37,300 designated for the 2016 primary election,  
18 and the other was in the amount of \$2,700 designated for the 2016 general election. On  
19 January 28, 2016, the Committee refunded \$40,000 to Best. The Complaint alleges that West  
20 made an excessive contribution to the Committee with respect to his contribution for the 2016  
21 primary election.

22 Best acknowledges in response to the Complaint that he made an improper contribution  
23 that the Committee refunded.<sup>1</sup>

<sup>1</sup> James W. Best Resp. at 1 (July 28, 2016).

**III. LEGAL ANALYSIS**

For the 2016 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceeded \$2,700 for each election.<sup>2</sup>

The available record indicates that Best's \$37,300 contribution to the Committee designated for the 2016 primary election exceeded the applicable contribution limit by \$34,600. Accordingly, the Commission finds reason to believe that James W. Best violated 52 U.S.C. § 30116(a).

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<sup>2</sup> See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 **RESPONDENT:** Darren Bailey

**MUR:** 7007

7  
8 **I. INTRODUCTION**

9 This matter was generated based on a Complaint filed by Richard Stubblefield. As set  
10 forth below, the Federal Election Commission ("Commission") finds reason to believe that  
11 Darren Bailey violated 52 U.S.C. § 30116(a), a provision of the Federal Election Campaign Act  
12 of 1971, as amended, by making an excessive contribution.

13 **II. FACTUAL BACKGROUND**

14 The available information indicates that on November 11, 2015, Respondent, a Total  
15 Grain Marketing, LLC ("TGM") customer, delivered grain to a TGM grain terminal in exchange  
16 for grain tickets totaling \$10,008.69. Bailey then took those tickets to a TGM location to  
17 exchange the tickets for cash. Instead of receiving the cash, Bailey requested that the check be  
18 made out to Kyle McCarter for Congress Committee ("Committee"), the principal campaign  
19 committee for McCarter, who sought the Republican nomination in the 15th Congressional  
20 District in Illinois in 2016.<sup>1</sup> The TGM location granted this request, and forwarded a check in  
21 the amount of \$10,008.69 to the Committee. Bailey thereby contributed \$10,008.69 to the  
22 Committee, although the Committee disclosed TGM as the source of the contribution on

<sup>1</sup> See Darren Bailey Resp. at 1 (June 27, 2016).

December 8, 2015.<sup>2</sup> This contribution was designated for the 2016 primary election.

On February 11, 2016, Bailey contributed an additional \$2,700 to the Committee designated for the 2016 primary election. On February 25, 2016, the Committee refunded \$10,008.69 to TGM. TGM in turn issued a \$10,008.69 check to Bailey.

### III. LEGAL ANALYSIS

For the 2016 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceeded \$2,700 for each election.<sup>3</sup>

The available record indicates that Bailey's \$12,708.69 in contributions to the Committee designated for the 2016 primary election exceeded the applicable contribution limit by \$10,008.69. Accordingly, the Commission finds reason to believe that Darren Bailey violated 52 U.S.C. § 30116(a).

<sup>2</sup> See Federal Committee 2015 Year-End Report (Jan. 29, 2016) at 14, *available at* <http://docquery.fec.gov/pdf/209/201601299004896209/201601299004896209.pdf>.

<sup>3</sup> See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 **RESPONDENT:** Tri Ford, Inc. **MUR:** 7007

7  
8 **I. INTRODUCTION**

9 This matter was generated based on a Complaint filed by Richard Stubblefield. As set  
10 forth below, the Federal Election Commission (the "Commission") dismisses the allegation that  
11 Tri Ford, Inc. ("Respondent") violated 52 U.S.C. § 30118(a), a provision of the Federal Election  
12 Campaign Act of 1971, as amended (the "Act"), by making a prohibited contribution.

13 **II. FACTUAL BACKGROUND**

14 The Complaint alleges that on November 5, 2015, Respondent, a corporation, made a  
15 prohibited \$305 contribution to Kyle McCarter for Congress Committee ("Committee"), the  
16 principal campaign committee for McCarter, who sought the Republican nomination in the 15th  
17 Congressional District in Illinois in 2016. On January 28, 2016, the Committee refunded \$305 to  
18 Respondent.

19 Tri Ford, Inc. acknowledges in response to the Complaint that it made an improper  
20 contribution that the Committee refunded.<sup>1</sup>

<sup>1</sup> Tri Ford Resp. at 1 (Feb. 22, 2016).



**III. LEGAL ANALYSIS**

The Act and Commission regulations prohibit corporations from making contributions to candidate committees.<sup>2</sup>

The available record indicates that Respondent made an impermissible corporate contribution. Nevertheless, because of the small amount of the contribution (\$305), further use of Commission resources is not warranted.<sup>3</sup> Accordingly, the Commission has exercised its prosecutorial discretion to dismiss the allegation that Tri Ford, Inc. violated 52 U.S.C. § 30118(a) by making a prohibited contribution.<sup>4</sup>

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<sup>2</sup> 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

<sup>3</sup> See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007).

<sup>4</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 **RESPONDENT:** Burgdorf and Associates Wealth Managers, Inc.

**MUR: 7007**

7  
8 **I. INTRODUCTION**

9 This matter was generated based on information ascertained by the Federal Election  
10 Commission (the "Commission") in the normal course of carrying out its supervisory  
11 responsibilities, and by a Complaint filed by Richard Stubblefield. As set forth below, the  
12 Commission finds no reason to believe that Burgdorf and Associates Wealth Managers, Inc.  
13 ("Respondent") violated 52 U.S.C. § 30118(a), a provision of the Federal Election Campaign Act  
14 of 1971, as amended (the "Act"), by making a prohibited contribution.

15 **II. FACTUAL BACKGROUND**

16 The Complaint alleges that on December 31, 2015, Respondent, a corporation, made a  
17 prohibited \$250 contribution to Kyle McCarter for Congress Committee ("Committee"), the  
18 principal campaign committee for McCarter, who sought the Republican nomination in the 15th  
19 Congressional District in Illinois in 2016. Twenty-eight days later, on January 28, 2016, the  
20 Committee refunded \$250 to Respondent.

21 Burgdorf and Associates Wealth Managers, Inc. acknowledges in response to the  
22 Complaint that it made an improper contribution that the Committee refunded.<sup>1</sup>

<sup>1</sup> Burgdorf and Associates Wealth Managers, Inc. Resp. at 1 (Mar. 14, 2016).

**III. LEGAL ANALYSIS**

The Act and Commission regulations prohibit corporations from making contributions to candidate committees.<sup>2</sup> Contributions that present genuine questions as to whether they are prohibited may be, within ten days of receipt, deposited into a campaign depository or returned to the contributor.<sup>3</sup> If such contribution is deposited and cannot be determined to be legal, the treasurer shall, within thirty days from receipt of the contribution, refund the contribution to the contributor.<sup>4</sup>

The available record indicates that the prohibited contribution that Respondent made was timely refunded by the Committee within thirty days of its receipt of the contribution. Accordingly, the Commission finds no reason to believe that Burgdorf and Associates Wealth Managers, Inc. violated 52 U.S.C. § 30118(a) by making a prohibited contribution.

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<sup>2</sup> 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

<sup>3</sup> See 11 C.F.R. § 103.3(b)(1).

<sup>4</sup> *Id.*

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

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5  
6 **RESPONDENT:** Rural King Distribution & Management, Inc.

**MUR: 7007**

7  
8 **I. INTRODUCTION**

9 This matter was generated based on a Complaint filed by Richard Stubblefield. As set  
10 forth below, the Federal Election Commission (the "Commission") finds no reason to believe  
11 that Rural King Distribution & Management, Inc. ("Respondent") violated 52 U.S.C. § 30118(a),  
12 a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), by making a  
13 prohibited contribution.

14 **II. FACTUAL BACKGROUND**

15 The Complaint alleges that on December 31, 2015, Respondent, a corporation, made a  
16 prohibited \$2,700 contribution to Kyle McCarter for Congress Committee ("Committee"), the  
17 principal campaign committee for McCarter, who sought the Republican nomination in the 15th  
18 Congressional District in Illinois in 2016.

19 Rural King Distribution & Management, Inc. responds that it "had no participation in the  
20 campaign of Kyle McCarter for Congress Committee" and did not contribute "any monetary  
21 donations to [the McCarter] campaign."<sup>1</sup>

<sup>1</sup> Rural King Distribution & Management Inc. Resp. at 1 (Feb. 19, 2016).

**III. LEGAL ANALYSIS**

The Act and Commission regulations prohibit corporations from making contributions to candidate committees.<sup>2</sup>

The available record indicates that Rural King Distribution & Management, Inc. did not make the contribution at issue. Accordingly, the Commission finds no reason to believe that Rural King Distribution & Management, Inc. violated 52 U.S.C. § 30118(a).

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<sup>2</sup> 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENT:** Rural King Distributing **MUR: 7007**

7  
8 **I. INTRODUCTION**

9 This matter was generated based on a Complaint filed by Richard Stubblefield. As set  
10 forth below, the Federal Election Commission (the "Commission" finds no reason to believe that  
11 Rural King Distributing ("Respondent") violated 52 U.S.C. § 30118(a), a provision of the  
12 Federal Election Campaign Act of 1971, as amended (the "Act"), by making a prohibited  
13 contribution.

14 **II. FACTUAL BACKGROUND**

15 The Complaint alleges that on December 31, 2015, Respondent, a corporation, made a  
16 prohibited \$2,700 contribution to Kyle McCarter for Congress Committee ("Committee"), the  
17 principal campaign committee for McCarter, who sought the Republican nomination in the 15th  
18 Congressional District in Illinois in 2016. Twenty-eight days later, on January 28, 2016, the  
19 Committee refunded \$2,700 to Respondent.

20 **III. LEGAL ANALYSIS**

21 The Act and Commission regulations prohibit corporations from making contributions to  
22 candidate committees.<sup>1</sup> Contributions that present genuine questions as to whether they are  
23 prohibited may be, within ten days of receipt, deposited into a campaign depository or returned

<sup>1</sup> 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

1 to the contributor.<sup>2</sup> If such contribution is deposited and cannot be determined to be legal, the  
2 treasurer shall, within thirty days from receipt of the contribution, refund the contribution to the  
3 contributor.<sup>3</sup>

4 The available record indicates that the prohibited contribution that Respondent made was  
5 timely refunded by the Committee within thirty days of its receipt of the contribution.

6 Accordingly, the Commission finds no reason to believe that Rural King Distributing violated  
7 52 U.S.C. § 30118(a) by making a prohibited contribution.

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<sup>2</sup> See 11 C.F.R. § 103.3(b)(1).

<sup>3</sup> *Id.*

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5  
6 **RESPONDENT:** Total Grain Marketing, LLC **MUR:** 7007

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8 **I. INTRODUCTION**

9 This matter was generated based on a Complaint filed by Richard Stubblefield. As set  
10 forth below, the Federal Election Commission (the "Commission") finds no reason to believe  
11 that Total Grain Marketing, LLC ("TGM") violated 52 U.S.C. § 30116(a), a provision of the  
12 Federal Election Campaign Act of 1971, as amended (the "Act"), by making an excessive  
13 contribution.

14 **II. FACTUAL BACKGROUND**

15 The Complaint alleges that on December 8, 2015, TGM made an excessive contribution  
16 in the amount of \$10,008.69 to Kyle McCarter for Congress Committee ("Committee"), the  
17 principal campaign committee for McCarter, who sought the Republican nomination in the 15th  
18 Congressional District in Illinois in 2016.

19 TGM's response to the Complaint disputes that it was the source of the contribution at  
20 issue. It explains that on November 11, 2015, Darren Bailey, a TGM customer, delivered grain  
21 to a grain terminal in exchange for grain tickets totaling \$10,008.69.<sup>1</sup> Bailey then took those  
22 tickets to a TGM location to exchange the tickets for cash.<sup>2</sup> Instead of receiving the cash, Bailey  
23 requested that the check be made out to the Committee. The TGM location granted this request,

<sup>1</sup> TGM Resp. at 1 (Feb. 29, 2016).

<sup>2</sup> *Id.*



1 although this action was not consistent with TGM policy, and forwarded a check in the amount  
2 of \$10,008.69 to the Committee.<sup>3</sup> The Committee subsequently disclosed TGM as the source of  
3 this contribution.

4 On February 25, 2016, the Committee refunded \$10,008.69 to TGM. TGM in turn issued  
5 a \$10,008.69 check to Bailey.

### 6 III. LEGAL ANALYSIS

7 For the 2016 election cycle, no person was permitted to make contributions to a candidate  
8 for federal office or his authorized political committee which in the aggregate exceeded \$2,700  
9 for each election.<sup>4</sup> The Act and Commission regulations further prohibit corporations from  
10 making contributions to candidate committees.<sup>5</sup>

11 The available record indicates that Total Grain Marketing, LLC did not make the  
12 contribution at issue. Accordingly, the Commission finds no reason to believe that Total Grain  
13 Marketing, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a).<sup>6</sup>

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

<sup>5</sup> 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

<sup>6</sup> Any contribution by TGM, an LLC, would be treated as a contribution from either a partnership or a corporation depending on how it elects to be treated by the IRS. See 11 C.F.R. § 110.1(g). The available information does not indicate which form TGM has elected. In TGM's response to the Complaint, it describes itself as a subsidiary of Growmark, Inc. but does not describe its own status. See TGM Resp. at 1. The Illinois Secretary of State website does not include information indicating whether TGM is treated as a partnership or a corporation. See Illinois Secretary of State LLC File Detail Report, available at <https://www.ilsos.gov/corporatellc/CorporateLlcController>.